IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:

10/748,829

Confirmation No.:

7169

Filed:

December 29, 2003

First Named

Weidong Yang

Inventor:

Title:

Local Process Variation Correction for Overlay Measurement

Art Unit:

2624

Examiner:

Dennis Rosario

Atty Docket:

NAN066 US

Saratoga, California February 2, 2009

Mail Stop Petitions Commissioner For Patents P.O. Box 1450 Alexandria, VA 22313-1450

<u>PETITION TO THE DIRECTOR UNDER 37 C.F.R. §1.181</u> <u>OR IN THE ALTERNATIVE</u> <u>PETITION FOR REVIVAL OF AN APPLICATION UNDER 37 C.F.R. §1.137(b)</u>

Dear Sir:

Petition Under 37 C.F.R. §1.181

Applicants hereby petition the Director to invoke supervisory authority under 37 C.F.R. §1.181 in the above-identified patent application to accept Applicants' issue fee transmittal and payment, which Applicants' attorney attempted to timely file with the U.S. Patent and Trademark Office ("USPTO") via facsimile on January 16, 2009.

Applicants received the Notice of Allowance from the Examiner in this application, having a mailing date of October 21, 2008. The Issue Fee was due on January 21, 2009.

On January 16, 2009, attorney for Applicants filed the Issue Fee Transmittal and PTO-2028, along with a Transmittal Form, in the USPTO, via facsimile. The Transmittal Form indicated that a Fee Transmittal Form was attached and included an authorization for the Commissioner to charge any additional fees due to the deposit account of Applicants' attorneys. Attached are copies of the originally filed Transmittal form, Part B – Fee(s) Transmittal, and PTO-2038 form as filed January 16, 2009, as well as the Auto-Reply Facsimile Transmission, received from the USPTO on January 16, 2009. The Auto-Reply

SILICON VALLEY
PATENT GROUP LLP
INNO COR AVORRE.
Suite 120
SAMBOGA CA 95/170
(408) 378-7777
FAX (402) 178-7770

1_

Application No. 10/748,829

Facsimile Transmission indicates that 2 pages were received by the USPTO, but it escaped observation that the pages received by the USPTO did not match the pages transmitted.

On February 2, 2009, it was discovered that the Issue Fee facsimile transmission did not go through correctly and completely. The first page of the facsimile transmittal, i.e., the Transmittal Form, was received by the Office, but the "Part B – Fee(s) Transmittal" was cut off at the top, below the mailing address for the USPTO, and the PTO-2038 was not received by the Office at all. Copies of the Transmittal Form and the Part B – Fee(s) Transmittal as received by the USPTO, and downloaded via PAIR, are attached hereto.

Applicants petition the Director to treat the Issue Fee transmittal filed on January 16, 2009, as a timely filed response to the Notice of Allowance. The Transmittal Form and the portion of the Part B – Fee(s) Transmittal, which were received by the USTPO, on January 16 evidence Applicants good faith attempt to properly and timely file the Issue Fee payment.

Additionally, Applicants submit that the Transmittal Form provided authorization to charge a deposit account for any fees and indicated that a Fee Transmittal Form was attached, and in fact, the top portion of the Part B – Fee(s) Transmittal was received by the USPTO. Thus, it should be clear from the forms that were actually received by the USPTO, that Applicants were responding to the Notice of Allowance and in fact tendered the necessary issue fee. Accordingly, Applicants request that the Transmittal Form with its payment authorization, should be treated as the required Issue Fee Payment and therefore the above-identified application is not abandoned.

Applicants believe that no Petition fee is necessary under 37 C.F.R. §1.181, but should Applicants be mistaken or any additional fees be necessary, the undersigned authorizes the Commissioner to charge any necessary fees due to Deposit Account 50-2263.

Petition Under 37 C.F.R. §1.137(b)

Should the Director deny the Petition under 37 C.F.R. §1.181, and therefore, find that the above-identified application is abandoned, <u>Applicants hereby Petitions for Revival of this Application under 37 C.F.R. §1.137(b)</u>.

1. Petition Fee

Applicant is a small entity. The undersigned authorizes the Commissioner to charge the small entity fee of \$770 and any other necessary fees to Deposit Account 50-2263.

SILICON VALLEY
PATENT GROUP LEF

11503 Cox Avenes.
Smit 220
Sections, CA 95070
(408) 379-7777
PAY LURN 378-7770

ABGEIVED CENTRAL PAX CENTER FEB 0 2 2009

2. Reply and/or Fee

Payment of the Issue Fee of \$755 is provided for in the attached copies of the Part B - Fee(s) Transmittal and PTO-2038.

3. Terminal Disclaimer

Applicants submit that since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office to the fax number 571-273-8300 on the below date.

Attorney for Applicant(s)

Date of Signature

Respectfully submitted,

Michael J. Halbert Attorney for Applicant(s)

Reg. No. 40,633

SILICON VALLEY

18805 Cm Aveauc. Suhe 120 Samoga, CA 95170 (408) 378-7777 FAX (408) 378-7770 USPTO

1/16/2009 5:33:24 PM

PAGE

1/001

Fax Server

O:Auto-reply fax to 408378...70 COMPANY:

WH

Auto-Reply Facsimile Transmission

COPY



TO:

Fax Sender at 4083787770

Fax Information Date Received: Total Pages:

1/16/2009 5:19:41 PM [Eastern Standard Time]

2 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(i). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received Cover Page

TRANS			10/749,629		
TRANSMITTAL FORM		Filing Sale	December 29, 2003		
		First period birector	Weldang Yeng	\Box	
		Action	2624		
to be used for all correspondence constraints stray		Pourskier Filché	Darwis Rosario		
TOTAL MATERIAL STREET,		According Constant Ma.	NANIDES US		
_	ENGL	Others (check all the	बर्र क्यून्येष्	=	
For Transpire Pa	i1 act	D _(marker) (N)	Agair Alle-quesa Convenidados	भारत	
	ed (PTO 2030	Licensing roleint Papers	Appeals that interference		
Amendment / Rose	• 🗆	Patiles	Appeal Communition for the TC Propose Feather Street (Prophy Street)	,	
ALM FOOL		Province to Comment to a Provincional Applies Ser	respektively testorization		
		Primar of Allermy, Revisions Change of Correspondence A	OR GERMALAGEN		
	F	Terminal Decisions		4-	
Drawnson of Time		Percent for Perfered			
Diprose Abundan					
	Ų	CD, Represent CD(s)			
Interestan Darde	and Signature —	Landscape Tebbs on GO	>		
Country Copy of	Delinio Describio Describio Describio				
Response to Mar-	ing Parts! This	Convocationer is here	ety gultimitant to charge any addition	nađ	
	rto Liberty Parts	due to Deposit Acco	ant 80-2263.		
	371.L2 & L33				
- 9	mosta TUDE	OF APPLICANT, ATTO	ENEY OR AGENT		
Pitra Hatten	Silicon Veder Papart Grove LLP				
digurers	M CTHOLIN-				
Priord News	Michael J. Helbert	Mindred & Mithout			
Dama					

(A) 1/301